

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
BARSTOW FIELD OFFICE
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Decision Record

and

Finding of No Significant Impact

for

**Edwards Bowl
Temporary Motorized Vehicle Use Closure
and Vehicle Routes Identification, San Bernardino County, California**

Prepared by:

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Barstow Field Office**

Environmental Assessment CA-680-01-57

Approved by /s/ _____
Tim Read, Manager Date

Barstow Field Office

DECISION RECORD

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Environmental Assessment CA-680-01-57

DECISION

Based on review of the Environmental Assessment (CA-680-01-57) (EA) and my Finding of No Significant Impacts, and consideration of the 69 public comment letters submitted on the EA, my decision is to approve the temporary closure to motorized vehicle use of approximately 3200 acres. The closed areas are within the boundaries of the California Desert Conservation Area (CDCA).

I have determined it necessary to use my authority under 43 Code of Federal Regulations (CFR) 8341.2(a) to close the identified area to vehicle use in order for BLM to provide additional protection for threatened and endangered species listed under the Endangered Species Act (ESA). Therefore, this restriction will take effect immediately and will remain in effect until a record of decision is signed for the West Mojave Plan, which is expected to be signed in June 2003. Certain exceptions apply to government vehicles on official business.

Implementation of the temporary restriction will include signing and maintaining Open routes as well as preparation and distribution of a brochure to explain the need for the closure, illustrate which routes are available for use, present an appropriate land use ethic, and explain how the public may participate in the formal route designation process. Implementation will also include enhanced public outreach, visitor contact, and law enforcement above current levels. Sign maintenance, and visitor contact and law enforcement patrols will be regularly scheduled. The purpose of visitor service contacts will be to achieve voluntary compliance of use of the signed routes. Additionally, an effort will be made to develop a force of volunteers that utilize this area to help with public outreach and sign and trail maintenance.

RATIONALE

This decision is necessary because desert tortoise populations throughout the California Desert have been reduced considerably over the last several years as a result of a variety of causes. Desert tortoise experts testified in July 2001 as to the substantial decline in the tortoise

population within the CDCA and the need for affirmative action to protect and stabilize the remaining population (Blincoe, et al.v. BLM, CA-690-01-02; CA-690-01-03, CA-690-01-04, CA-680-01-03, CA-680-01-04, CA-680-01-05, CA-680-01-06, Decision dated August 24, 2001, p.20 et seq)). The desert tortoise is federally listed as a threatened species by the Fish and Wildlife Service (FWS) in accordance with the Endangered Species Act (ESA). By taking this interim closure action, BLM will provide additional protection for the threatened desert tortoise and its habitat while a long-term management strategy is developed. BLM is currently developing such strategy as part of the West Mojave plan which is scheduled for completion in the June 3, 2003.

BLM recognizes that the interim closure will displace some OHV users. OHV users who utilized the area to get away from the crowds, and who are unable or unwilling to utilize the El Mirage Recreation Area, will not be likely to utilize other areas (EA, p.15). However, the closure will not have a significant negative impact on recreation since the closure is temporary and other areas such as El Mirage can fully accommodate the displaced users.

43 CFR 8341.2(a) provides that the authorized officer shall immediately close an area when he determines that OHV use is causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, other authorized uses, or other resources. Because tortoise populations in the CDCA are in substantial decline as a result of OHV and other impacts, and the issuance of a record of decision on the West Mojave plan is not anticipated until June 2003, BLM concludes immediate closure under 43 CFR 8341.2(a) is necessary. There is a considerable body of literature that indicates OHV use and related recreational activities can have adverse effects upon the tortoise (references cited list; see also EA references list).

The Edwards Bowl is located in the Fremont-Kramer Critical Habitat Unit in the Western Mojave Recovery Unit for the desert tortoise (*Gopherus agassizii*), a State and federally listed as threatened species. The numerous OHV roads/trails in the area impact the constituent elements (cover from a fairly contiguous shrub canopy with moderate interspaces, uncompacted soils suitable for burrowing, a healthy plant community with a low amount of non-native species and low to moderate diversity, and a small amount of anthropogenic induced disturbances) necessary for desert tortoise habitat.

On March 16, 2000, the Center for Biological Diversity, et al (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against BLM. The Center alleged the BLM was in violation of Section 7 of the ESA by failing to enter into formal consultation with the FWS on the effects of adoption of the CDCA Plan, as amended, upon threatened and endangered species. Instead of litigating the case, and facing a possible injunction of all authorized desert activities, BLM entered into five stipulated agreements, including the stipulation which includes this closure.

Although precipitated by the Center's lawsuit, BLM has initially reviewed its current

management of the Edwards Bowl area under the CDCA plan as it relates to desert tortoise. As an interim measure, BLM implements this closure to provide additional protection to the tortoise pending implementation of the yet to be completed West Mojave plan. By implementing this interim closure, BLM ensures compliance with sections 7(a) and 7 (d) of the ESA. Section 7(a)(1) of the ESA provides that Federal agencies are to utilize their authorities to further the purposes of the Act by carrying out programs for the conservation of listed species (16 USC 1536(a)(1)). Section 7(d) of the ESA provides that after initiation of consultation under §7(a)(2), a Federal agency shall not make any irreversible or irretrievable commitment of resources with respect to agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate the requirements of the ESA.

BLM initiated consultation with Fish and Wildlife Service (FWS) on the CDCA Plan on January 31, 2001. A Biological Opinion on the CDCA Plan is expected later this year. BLM initiated consultation on this interim closure on June 15, 2001. FWS issued a letter of positive concurrence on August 15, 2001. In addition, BLM will consult on the West Mojave plan prior to issuing decision records.

The interim closure of this area is consistent with the *California Desert Conservation Area (CDCA) Plan*, 1980, as amended. The CDCA Plan contains general and specific direction for protection listed species, such as the taking of appropriate action, including closure of routes and areas (CDCA Plan, page 82, March 1999 reprinted version).

PUBLIC INVOLVEMENT

On June 15, 2001, a notice of the proposed order for temporary closure as described in Environmental Assessment CA-670-01-57 was published in the Federal Register (66 FR 32639-32640). On the same day BLM issued a news release regarding the proposed order. On June 19, 2001, BLM distributed the EA for comment to a wide range of interested parties identified through a mailing list maintained at the BLM's California Desert District Office. The period for public comments ended July 9, 2001.

BLM received 69 comments letters on the proposed closure and EA. An additional six comments were received after the close of the comment period and therefore were not considered. A summary of the comments and BLM's response to those comments follows:

Comment: *BLM should extend the comment period.*

Response: While we recognize and appreciate the burden the short public review period has on the ability of the public to respond, BLM has determined that a sense of urgency is necessary in this case. Further, because this is an interim measure, the public will be able to review and comment on the routes of travel designation process through the West Mojave planning process.

Comment: *BLM public land must remain open to access private property.*

Response: The proposed network addresses all known private property access needs. If

additional access is required to private property, property owners may apply for rights of way through existing laws and regulation.

Comment: *There needs to be equestrian trail heads within 10 miles of points of interest.*

Response: The proposed access network provides an area for trail head activities at the Edwards Bowl site. This site will service the eight square mile planning area.

Comment: *Statements in the EA regarding “thoroughfare transportation” and “driving for pleasure” are contradictory.*

Response: The EA refers to thoroughfare transportation and driving for pleasure as two separate types of uses. Thoroughfare transportation in the Edwards Bowl area occurs primarily on Avenue C or Buckthorne Canyon Road as people pass through the area. Driving for pleasure may occur on these roads but is referred to in the EA as the use that occurs on the network of primitive routes within the area.

Comment: *How will the proposed action reduce the potential destruction of cultural resources when there are no recorded historic or prehistoric sites?*

Response: The Edwards Bowl area has not been fully surveyed for historic or prehistoric artifacts, so while there are no known historic or prehistoric sites, it can not be said that none exist. Therefore, continued use of the larger existing network increases the potential of impact to any yet to be identified historic or prehistoric sites.

Comment: *How would the proposed action enhance scenic qualities when the EA states that there are “no exciting visual elements”?*

Response: While the Edwards Bowl does not offer a high level of scenic opportunity, the extensive network of routes does distract from the limited scenic qualities of the area.

Comment: *How will the proposed action reduce impacts to sensitive plant species when none have been identified?*

Response: Surveys for sensitive plant species are incomplete. While there are no known sensitive plant species in the area, we can not assume that there are no sensitive plant species within the Edwards Bowl planning area. Plants can be impacted from one-time or repeated crushing by vehicles, especially those which are driven off roads.

Comment: *Limiting use of the Edwards Bowl area would increase use in other areas, thereby increasing impacts in those areas.*

Response: This concern was addressed in the Cumulative Impacts section of the EA. BLM believes that ample opportunity for off highway driving exists in the Stoddard and Johnson Valley, and El Mirage Open Areas such that any use displacement can shift to those open areas. Further, BLM has determined that the adverse environmental impacts of not developing manageable route networks is more substantial than what may occur from shifts in use.

Comment: *What are the overall goals for managing the area?*

Response: The overall goals for management of the Edwards Bowl area are defined in the 1980 CDCA Plan, as amended, and associated activity plans, including the El Mirage Plan and the Western Mojave Land Tenure Adjustment (LTA) EIS/EIR (1991). In those documents, the area has been defined as Multiple-use class (MUC) “limited” and vehicle access designation “limited”. MUC limited lands are managed “to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished” (CDCA Plan, 1980). Goals for vehicle designation in limited areas are given on page 79 of the reprinted CDCA Plan, 1989). In the West Mojave LTA Plan, the area was identified for consolidation of public lands, rather than retention or disposal, based on value for desert tortoise recovery, manageability, and priority military values (e.g., supersonic test area, portions of the George Air Force Base Precision Impact Range Area, and/or ingress to George Air Force Base). The area’s management is being further addressed through the West Mojave Plan. This motorized vehicle use restriction is interim in nature, specifically seeking not to foreclose any management options available to the West Mojave Plan.

Comment: *The proposed action does not reflect any serious effort to reach consensus.*

Response: This action is temporary in nature and addresses immediate management needs. The final determinations regarding route designations will occur through the West Mojave Plan. The West Mojave Plan has a long history of public involvement and consensus building which will continue throughout the completion of the plan.

Comment: *The proposed action MUST include specific plans and methods for assessment of impact or amelioration resulting from the proposed closures.*

Response: This EA was developed utilizing the standard BLM assessment process for development of Environmental Assessments. Final route designations and the assessment of associated affects of those decisions will be assessed through the full plan amendment process including an Environmental Impact Statement and Biological Consultation by the Fish And Wildlife Service as required by the Endangered Species Act.

Comment: *The proposed action MUST include specific threshold limits or criteria by which to determine...success or failure or the proposed action.*

Response: Because of the temporal nature of the proposed action, lack of active reclamation efforts, and its relatively short time frame, it is not anticipated to manifest a significantly measurable change. Final, long term route designations and reclamation needs will be determined by the West Mojave Plan which will also contain a monitoring program to assure that the goals for the plan are achieved.

Comment: *What are the cumulative affects of the proposed action?*

Response: Because of the temporary nature of the proposed action the cumulative affects of the project are difficult to determine. The BLM did consider cumulative affects in the EA consistent with planning policy. Final, long term route designations and reclamation needs will be determined by the West Mojave Plan which will also contain a detailed cumulative affects analysis.

Change: BLM Staff noticed an error in the EA on page 4. The public lands sections are listed as 6, 7, 8, 16 and 20 with the remainder being privately owned. It turns out that this is correct except that Section 16 is private and Section 18 is public.

APPEAL RIGHTS: This decision is effective immediately. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal (43 CFR 4.21). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413). If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Accept as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) the relative harm to the parties if the stay is granted or denied,
- (2) the likelihood of the appellant's success on the merits,
- (3) the likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) whether the public interest favors granting the stay.

References

Federal Register Vol 54, No. 149 pp. 32326-32331, Emergency Listing as Endangered, August 4, 1989.

Federal Register Vol 55, No. 63 pp. 12178-12190, Regular Rule-Making Listing as Threatened, April 2, 1990.

Federal Register Vol 59, No. 26 pp. 5820-5866, Critical Habitat Final Rule, February 8, 1994.

Sweitzer, Harvey C., Administrative Law Judge; Decision of August 24, 2001; Appeal of Bureau of Land Management Final Grazing Decision and Decision Record; Richard Blincoe and Blincoe Farms, et al.

FINDING OF NO SIGNIFICANT IMPACT

The environmental impacts associated with the proposed action and the alternatives have been assessed. Based upon the analysis provided in the attached EA, I conclude the approved action is not a major federal action and will result in no significant impacts to the human environment under the criteria in Title 40 Code of Federal Regulations Subpart 1508. Preparation of an Environmental Impact Statement is not required.

Approved by: /s/_____
Tim Read
Barstow Field Office

Date